

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARLES EDWARD JENKINS,

Defendant-Appellant.

UNPUBLISHED

June 18, 2013

No. 304644

Wayne Circuit Court

LC No. 10-012273-FC

Before: RIORDAN, P.J., and TALBOT and FORT HOOD, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of assault with intent to do great bodily harm less than murder, MCL 750.84. Defendant was sentenced as a fourth habitual offender, MCL 769.12, to 10 to 30 years. We affirm.

I. FACTUAL BACKGROUND

Defendant and the victim, Jason Hawkins, were neighbors. In the summer of 2010, they had an argument culminating in a physical altercation. Despite this confrontation, Hawkins believed that his relationship with defendant became stable and they resumed normal relations.

On October 4, 2010, Hawkins was staying with his girlfriend who lived a couple of streets away because he had bedbugs in his house. He had left his house unlocked, however, because he was in the process of moving. That night, Javontae Thomas, who Hawkins referred to as his nephew and as “Louie,” was walking by Hawkins’ house and saw defendant breaking in, taking two speakers, and loading them into a van. Louie immediately went to Hawkins and informed him of defendant’s actions.

Hawkins, Louie, Deangelo Hawkins (Jason Hawkins’ nephew), and another man drove to the house and saw defendant with the speakers. Hawkins approached defendant and they exchanged words. According to Hawkins, defendant started shooting. The four men scattered and defendant continued shooting. Hawkins ran toward his house and defendant pursued him. Defendant continued to shoot until he eventually struck Hawkins in the back with a bullet. Hawkins was able to stagger to the car and heard defendant say: “yeah, I told you I was gonna get you.”

At trial, defendant testified to a much different chain of events. He claimed that after the altercation in the summer of 2010, he feared for his life and believed that Hawkins would assault him again. Defendant's girlfriend likewise testified that after the altercation, she believed defendant's life was in danger. Defendant obtained a gun for protection. On the night of the shooting, defendant denied entering Hawkins' house or stealing his speakers. He claimed that he was near his van that night because he was retrieving his son's diaper bag.

When defendant saw Hawkins and the other men approach him, he thought he was about to die. He testified that one of the men was carrying a club and Hawkins stated that they were about to hurt defendant. According to defendant, the men approached him, and he started shooting in an attempt to scare them away. He claimed that he was not shooting at anyone in particular, he did not chase Hawkins, and he did not reload his weapon. Defendant also denied even knowing that Hawkins had been shot.

While defendant was charged with assault with intent to commit murder, MCL 750.83, the jury found him guilty of the lesser crime of assault with intent to do great bodily harm less than murder, MCL 750.84. He was sentenced to 10 to 30 years. Defendant now appeals on several grounds.

II. JURY QUESTIONS

A. Standard of Review

Defendant first claims that the trial court violated his due process right to a fair and impartial jury by permitting jurors to submit questions to witnesses during the trial. We review unpreserved claim of constitutional error for plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

B. Analysis

At the time of defendant's trial, MCR 6.414(E) stated:

The court may, in its discretion, permit the jurors to ask questions of witnesses. If the court permits jurors to ask questions, it must employ a procedure that ensures that inappropriate questions are not asked, and that the parties have the opportunity to object to the questions.

This Court also has recognized that it is within "the sound discretion of the trial court whether a question from a juror should be permitted because it aids the fact-finding process." *People v Stout*, 116 Mich App 726, 733; 323 NW2d 532 (1982); see generally *People v Heard*, 388 Mich 182; 200 NW2d 73 (1972).

On appeal, defendant challenges the ability of jurors to ask questions.¹ He contends that juror questions allow the jury to play an active role in factfinding. Yet, defendant has failed to offer any reason that would justify disregarding the court rule or binding case law. Defendant's citation to law in other states is unavailing, as this Court is bound by the Michigan Supreme Court in *Heard, supra*, not by decisions from courts in other states. *People v Jackson*, 292 Mich App 583, 595 n 3; 808 NW2d 541 (2011). We also note that the trial court in the instant case delineated a procedure to ensure the appropriateness of the questions asked, in accordance with MCR 6.414(E). The court directed the jurors to submit their questions in writing, informed them that questions would be used only if allowed under the Michigan Rules of Evidence, consulted with the attorneys before reading the questions, and afforded the attorneys an opportunity to examine the witnesses after they answered the jurors' questions. Defendant has failed to demonstrate any plain error requiring reversal. *Carines*, 460 Mich at 763-764.

III. WITNESS THREAT

A. Standard of Review

Defendant next claims that the trial court erred in precluding him from questioning Louie about a threat Louie allegedly made to defendant's girlfriend after the first day of trial. At trial, defendant contended that he should be permitted to question Louie about the threat because it was relevant for the mindset of defendant and his family. We review for an abuse of discretion any challenge to the trial court's decision to exclude testimony based on that ground. *People v Kowalski*, 492 Mich 106, 119; 821 NW2d 14 (2012); *People v Minor*, 213 Mich App 682, 684; 541 NW2d 576 (1995).

Yet, defendant now argues on appeal that the trial court's decision deprived him of his constitutional right to present a defense and to confront the witness against him. Because defendant did not raise these constitutional issues below, our review is limited to plain error affecting substantial rights. *Carines*, 460 Mich at 763-764; see also *People v Bulmer*, 256 Mich App 33, 35; 662 NW2d 117 (2003) ("an objection based on one ground at trial is insufficient to preserve an appellate attack based on a different ground.")

B. Analysis

Defendant presented a theory of self-defense at trial and argued that Louie's threat was admissible to show defendant's "mindset." Yet, it was defendant's "state of mind *at the time of the act*" that is "material because it is an important element in determining his justification for his belief in an impending attack by the deceased." *People v Harris*, 458 Mich 310, 316; 583 NW2d 680 (1998) (emphasis added). A subsequent threat at trial from one witness to another bears no relevance on defendant's state of mind at the time of the crime. MRE 401. Thus, the trial court properly found that such evidence was inadmissible because it was not evidence of

¹ Rather than objecting to any one question in particular, defendant challenges the very ability of the jury to ask questions.

defendant's state of mind during the crime. See *People v Fletcher*, 260 Mich App 531, 553; 679 NW2d 127 (2004) ("evidence that is not relevant is not admissible.").

Defendant now argues that he was deprived of his constitutional right to present a defense and to confront the witness against him because Louie's threat was relevant to show bias. However, defendant made no record of the nature of this alleged threat or what precisely Louie said. Furthermore, even if we agree that defendant should have been permitted to cross-examine Louie about this alleged threat, reversal is not warranted.

In regard to the right to present a defense, defendant presented significant evidence of his theory of self-defense. The prosecution witnesses and defendant testified that Hawkins and the other men drove in the van to confront defendant, which tended to show that Hawkins was the initial aggressor. Louie even admitted that they were going to "beat" defendant. Defendant also testified that he fired the gunshots because he feared for his life, he did not aim at anyone, he never chased Hawkins, and Hawkins had threatened him. Through defendant's own testimony and that of his girlfriend, he also presented evidence regarding past confrontations with Hawkins as further proof that his fear was reasonable. Thus, "it is patent from a review of the trial record that defendant was allowed to present evidence in the form of his testimony" and that of his girlfriend, "which, if the jury believed, would have provided defendant a complete defense to the charges brought against him. Consequently, we reject defendant's claim that constitutional error occurred[.]" *People v King*, 297 Mich App 465, 474; 824 NW2d 258 (2012).

We similarly reject defendant's claim that reversal is required because of an infringement on his right to confront Louie. First, while defendant claims that he should have been allowed to probe a potential bias Louie harbored for Hawkins, the evidence at trial demonstrated that Louie was closely associated with Hawkins, as Hawkins even referred to Louie as his nephew. Louie and Hawkins also acted in concert when driving to Hawkins' house with the intent to prevent defendant from stealing Hawkins' speakers.

Moreover, other than Louie's testimony, there was considerable evidence demonstrating defendant's guilt. Hawkins testified that he arrived at his house after learning defendant was trying to steal his speakers, exited the vehicle, and asked defendant: "Damn, man, that's what the f--- we doin'?" According to Hawkins, defendant started shooting and despite the fact that Hawkins ran away, defendant pursued him until he succeeded in shooting Hawkins in the back. Consistent with this narrative, Deangelo testified that they drove to Hawkins' house and saw defendant loading the speakers into a van. Deangelo testified that Hawkins said to defendant ". . . this what we doin'?" and defendant began shooting at Hawkins, continuing even after the men fled. The man defendant identified as carrying a club also denied having such a weapon during the incident. Given this evidence of guilt, we find that reversal is not required because defendant failed to show that any error based on the confrontation clause affected his substantial rights, i.e. that "the error was outcome determinative." *People v Bauder*, 269 Mich App 174, 180; 712 NW2d 506 (2005); see also *People v Walker*, 273 Mich App 56, 66; 728 NW2d 902 (2006) (when raising an unpreserved confrontation clause claim, defendant "must show plain error that affected his substantial rights.").

IV. PRIOR CONVICTION

A. Standard of Review

Lastly, defendant claims that the trial court abused its discretion in allowing impeachment evidence of his prior carjacking conviction, which violated his due process right to a fair trial. “This Court reviews for an abuse of discretion a trial court’s determination whether a prior conviction involving a theft component may be used to impeach a defendant.” *People v Meshell*, 265 Mich App 616, 634; 696 NW2d 754 (2005). “An abuse of discretion results when a circuit court selects an outcome falling outside the range of principled outcomes.” *Kowalski*, 492 Mich at 119. Constitutional questions and issues of law underlying evidentiary rulings are reviewed de novo. *Id.*

B. Analysis

Defendant argues that evidence of his prior carjacking conviction should not have been admitted because it had limited probative value and significant prejudicial effect. We initially note that the charged crime and the prior conviction of carjacking were significantly different. MRE 609(b) (when determining the prejudicial effect of a prior conviction, the court must consider “the conviction’s similarity to the charged offense[.]”). While assault with intent to do great bodily harm less than murder focuses on the assault of a person, “the carjacking statute focuses on the taking of a particular type of property, a motor vehicle, rather than on the person from whom the property is taken.” *People v Davis*, 468 Mich 77, 82; 658 NW2d 800 (2003).

Moreover, even if the trial court erred in allowing evidence of defendant’s carjacking conviction, it was harmless beyond a reasonable doubt. First, as discussed above, there was considerable evidence of defendant’s guilt. Moreover, the prosecutor’s reference to defendant’s prior carjacking conviction during cross-examination was brief, and she did not mention his carjacking conviction in her closing argument. See *People v Parcha*, 227 Mich App 236, 247-248; 575 NW2d 316 (1997) (in determining whether admission of a prior conviction was harmless error, it is relevant that “the evidence overwhelmingly established that defendant shot the victim in the back” and that “defendant’s prior conviction[] [was] only mentioned once and the reference was brief; the prosecutor did not refer to the conviction[] during his closing or rebuttal argument.”).

Even more significant is that regardless of whether this evidence was admitted, the jury knew defendant had a prior felony conviction because he was charged with possession of a firearm by a felon, MCL 750.224f, and the parties stipulated to admit evidence that defendant had a prior felony conviction and was ineligible to possess or carry a firearm. Defendant’s girlfriend also testified that she was aware defendant had a prior felony conviction. Thus, we find that any error in allowing the fleeting reference to defendant’s carjacking conviction, which was significantly different than the charged crimes, was harmless beyond a reasonable doubt. MCR 2.613; see *Parcha*, 227 Mich App at 248 (“[g]iven the circumstances, we cannot say that

the correction of this relatively minor error would have influenced the jury in any significant respect.”).²

V. CONCLUSION

Defendant has failed to establish any error requiring reversal in the jury questions, the exclusion of evidence of Louie’s threat, and in the limited reference to defendant’s prior carjacking conviction. We affirm.

/s/ Michael J. Riordan
/s/ Michael J. Talbot
/s/ Karen M. Fort Hood

² We find that the instant case is distinguishable from *People v Snyder*, __Mich App__; __NW2d__ (Docket No. 310208, issued May 21, 2013) (slip op at 4-5). In *Snyder*, this Court found that the admission of the defendant’s prior conviction was not harmless because the only evidence at trial was the victim’s testimony and the defendant’s. *Id.* Here, however, not only did the prosecution present evidence from Hawkins, Deangelo, and Thomas, but the parties also stipulated to evidence that defendant had a prior felony conviction. Thus, this was not a “one-on-one credibility contest” as was the case in *Snyder*. (Slip op at 4).